

## **REMARKS/ARGUMENTS**

Claims 1, 3-6, 8-10, 21 and 22 are pending in the present application. Claims 1, 3 and 8 were amended, and claims 2, 11-16 and 18-20 were canceled in this Response. No claims were added. Reconsideration of the claims is respectfully requested in view of the above amendments and the following comments.

In this Amendment, Applicants have canceled claims 11-16 and 18-20 from further consideration in this application. Applicants are not conceding that the subject matter encompassed by claims 11-16 and 18-20 is not patentable. Claims 11-16 and 18-20 were canceled in this Amendment solely to facilitate expeditious prosecution of the remaining claims. Applicants respectfully reserve the right to pursue additional claims, including subject matter encompassed by claims 11-16 and 18-20, as presented prior to this Amendment in one or more continuing applications.

### **I. 35 U.S.C. § 103, Obviousness**

The Examiner has finally rejected Claims 1-6, 8-16 and 18-22 under 35 U.S.C. § 103 as being unpatentable over Carlson, US Patent No. 6,697,849 (hereinafter “Carlson”) in view of Romero et al., US Published Patent application No. 2002/0069279 (hereinafter “Romero”). This rejection is respectfully traversed.

In finally rejecting the claims, the Examiner states:

3. Referring to claim 1, Carlson discloses a method of distributing traffic to application instances (i.e. applications 202-208 running on application server 200) on one or more computing devices (i.e. servers 308A-C), comprising:

obtaining application instance specific operational information (i.e. server load criteria and application component performance criteria) identifying operational characteristics (i.e. elements shown in Figures 8 and 9) of an application instance on a computing device on the one or more computing devices (e.g. abstract; col. 12, lines 40-67);

generating a load balancing weight to be associated with an application instance based on the application instance specific operational information (i.e. random number is generated in a weighted manner according to the “best” server at that particular time) (col. 16, lines 13-47); and

distributing traffic based on the generated load balancing weight (i.e. “gracefully” distribute requests among the application servers) (col. 16, lines 35-47).

Carlson does not explicitly disclose that the instance specific operational information includes an importance of the transactions processed by the application instance. In analogous art, Romero discloses another method for distributing traffic to application instances which discloses the application instances (i.e. servers) are reserved for priority specific transactions (i.e. the premium servers are reserved for high priority transactions, therefore the application specific service level includes information regarding the type of transaction currently being processed) (¶ 30-31, 33). It would have been obvious to one of ordinary skill in the art to combine the teaching of Romero with

Carlson in order to utilize the policies of Romero with the performance criteria used by Carlson, thereby increasing the ability to customize load balancing weights according to the user's liking.

Final Office Action dated October 31, 2007, pages 3-4.

By the present Amendment, independent claim 1 has been amended to incorporate the subject matter previously recited in dependent claim 2, and claim 2 has been canceled. In addition, claim 1 has been further amended to recite the manner in which application instance topology is identified using an agent application residing on the computing device. Specifically, claim 1 has been amended to recite "wherein the agent application identifies the application instance topology by sending a correlation in a request to an agent application associated with a second application instance, wherein application instance information is provided by the agent application associated with the second application." Support for this amendment can be found, for example, on page 17, lines 10-22 of the specification. In the Final Office Action dated October 31, 2007, the Examiner has indicated, and Applicants agree, that the cited references do not disclose or suggest this subject matter. In an Advisory Action dated February 19, 2008, however, the Examiner indicated that the amendments to claim 1 raised new issues that would require further search and consideration.

Claim 1 is believed to patentably distinguish over the cited art in its present form, and it is respectfully requested that the Examiner so find.

Claims 3-6, 8-10, 21 and 22 depend from and further restrict claim 1 and also patentably distinguish over the cited art, at least by virtue of their dependency.

Claims 11-16 -18 and 20 have been canceled and, accordingly, the rejection with respect to those claims is now moot.

Therefore, the rejection of claims 1-6, 8-16 and 18-22 under 35 U.S.C. § 103 has been overcome.

## **II. Conclusion**

For at least all the above reasons, this application is believed to be in condition for allowance, and it is respectfully requested that the Examiner so find and issue a Notice of Allowance in due course.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,  
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